

Ira S. Lipsius, Esq. (IL 5704)  
Schindel, Farman, Lipsius, Gardner & Rabinovich LLP  
Attorneys for Plaintiff, Isaac Cohen, M.D.  
14 Penn Plaza, Suite 500  
New York, NY 10122  
212-563-1710

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
ISAAC COHEN, M.D.,

CV 09-5383 (LDW) (ARL)

Plaintiff,

-against-

**JOINT PRETRIAL ORDER**

PROVIDENT LIFE AND CASUALTY,

Defendant.  
-----X

1. Name, Address and Telephone Number for Trial Counsel:

**Trial Counsel for Plaintiff:**

Ira S. Lipsius, Esq.  
Schindel, Farman, Lipsius, Gardner & Rabinovich LLP  
14 Penn Plaza, Suite 500  
New York, NY 10122  
212-563-1710  
Fax: 212-695-6602

**Trial Counsel for Defendant:**

Louis P. DiGiaimo, Esq.  
McElroy, Deutsch, Mulvaney & Carpenter, LLP  
1300 Mouth Kemble Avenue  
P.O. Box 2075  
Morristown, NJ 07962  
(973) 425-8843  
Fax: (974) 425-0161

2. Statement whether case is to be tried with or without a jury and number of trial dates:

**Plaintiff:**

Two-day Jury Trial

**Defendant:**

Defendants anticipate the jury trial will take 5 days, from jury selection through closing argument.

3. Fact & Expert Witnesses Whose Testimony is to be Offered;

**Witness List for Plaintiff**

1. Isaac Cohen, M.D.  
6 Helen Drive  
East Hills, NY 11577  
Fact Witness
2. Helen Marks, M.D.  
6 Helen Drive  
East Hills, NY 11577  
Fact Witness
3. Roger L. Simpson, M.D.  
Long Island Plastic Surgical Group  
999 Franklin Avenue  
Garden City, NY 11566  
Fact Witness
4. Charles A. Mitgang, M.D.  
Charles A. Mitgang, M.D., PC  
371 Merrick Road, Suite 302  
Rockville Centre, NY 11570  
Fact witness
5. Kenneth M. Kamler, M.D.  
410 Lakeville Road, Suite 100  
New Hyde Park, NY 11042  
Fact & expert witness
6. David Weinstock, M.D.  
Lynbrook Cardiology Associates  
253 Broadway  
Lynbrook, N.Y. 11563  
Fact witness

7. Richard N. Stellar, M.D.  
Long Island Gastroenterology Group, P.C.  
131 Merrick Road  
Merrick, NY 11566  
Fact Witness
8. Carlos F. Montero, M.D.  
2920 Hempstead Turnpike  
Levittown, NY  
Expert Witness
9. R. Groves, M.D.  
c/o UNUM Group  
18 Chestnut Street  
Worcester, MA 01608  
Defendant's expert witness
10. Lynn M. Shumaker  
Sr. Disability Benefits Specialist  
Unum Group  
18 Chestnut Street  
Worcester, MA 01608  
Fact witness
11. Deborah A. Horvath, MA  
Voc Rehab Consultant  
Last Known Address: 51 Christie Way, Apartment 51D  
Marlborough, MA 01752  
Fact witness
12. David P. Mero  
Sr. Commutation Specialist Unum Group  
18 Chestnut Street  
Worcester, MA 01608  
Fact witness
13. Laurence G. Cignoli, M.D.  
VP & Sr. Medical Director/Underwriting Unum Group  
18 Chestnut Street  
Worcester, MA 01608  
Fact witness

14. Jennifer Small  
Disability Benefits Consultant  
Last Known Address: 48A Hoskins Road  
Simsbury, CT 06070  
Fact witness
15. Robert J. Rodecker  
Voc Rehab Consultant Unum Group  
18 Chestnut Street  
Worcester, MA 01608  
Fact witness
16. Joel W. Saks, M.D.  
Medical Consultant Unum Group  
18 Chestnut Street  
Worcester, MA 01608  
Fact witness
17. Nabil A. Malek, M.D.  
Medical Consultant  
Unum Group  
18 Chestnut Street  
Worcester, MA 01608  
Fact witness
18. Helen L. Dykeman  
Field Consultant  
Last Known Address: 31 Island Creek Road  
Southampton, NY 11968  
Fact witness
19. Marc A. Lippel  
Executive Field Consultant  
Unum Group  
1 Fountain Square  
Chattanooga, TN 37402  
Fact witness
20. Ericka L. Morales  
Sr. Disability Benefits Specialist  
Last Known Address: 249 Marcy Street, 2nd Floor  
Southbridge, MA 01550  
Fact witness

21. Jeffrey S. Parsons  
Director, IDI Benefits Unum Group  
18 Chestnut Street  
Worcester, MA 01608  
Fact witness
22. Hope R. Troilo  
Director, Extended Duration Unit  
Unum Group  
18 Chestnut Street  
Worcester, MA 01608  
Fact witness
23. Anila Skende  
Benefits Center Coordinator, EDU  
Unum Group  
18 Chestnut Street  
Worcester, MA 01608  
Fact witness
24. Joseph W. Griffin  
Manager, EDU  
Unum Group  
18 Chestnut Street  
Worcester, MA 01608  
Fact witness
25. Joel W. Saks, M.D.  
Medical Consultant  
18 Chestnut Street  
Worcester, MA 01608  
Fact witness
26. Patricia Phelan-UNUM Group  
Fact witness

**Witness List of Defendant**

1. Joseph W. Griffin  
Manager, EDU  
Unum Group  
18 Chestnut Street  
Worcester, MA 01608  
Fact witness

2. Lynn M. Shumaker  
Sr. Disability Benefits Specialist  
Unum Group  
18 Chestnut Street  
Worcester, MA 01608  
Fact witness
3. Deborah A. Horvath, MA  
Voc Rehab Consultant  
Last Known Address:  
51 Christie Way, Apartment 51D  
Marlborough, MA 01752  
Fact witness
4. Robert J. Rodecker  
Sr. Voc Rehab Consultant  
Unum Group  
18 Chestnut Street  
Worcester, MA 01608  
Fact witness
5. Joel W. Saks, M.D.  
Medical Consultant  
Unum Group  
18 Chestnut Street  
Worcester, MA 01608  
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6. Nabil A. Malek, M.D.  
Medical Consultant  
c/o Unum Group  
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Worcester, MA 01608  
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7. Marc A. Lippel  
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Unum Group  
1 Fountain Square  
Chattanooga, TN 37402  
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8. Jeffrey S. Parsons  
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Unum Group  
18 Chestnut Street  
Worcester, MA 01608  
Fact witness
9. Hope R. Troilo  
Director, Extended Duration Unit  
Unum Group  
18 Chestnut Street  
Worcester, MA 01608  
Fact witness
10. Isaac Cohen, M.D.  
6 Helen Drive  
East Hills, NY 11577  
Fact witness
11. Helen Marks, M.D.  
6 Helen Drive  
East Hills, NY 11577  
Fact witness
12. Jane E. Russell  
Orlin & Cohen Orthopedic Associates, LLP  
2 Lincoln Avenue, Suite 400  
Rockville Centre, NY 11570  
Fact witness
13. Roger L. Simpson, M.D.  
Long Island Plastic Surgical Group  
999 Franklin Avenue  
Garden City, NY 11566  
Fact witness
14. R. John Groves, M.D.  
c/o Unum Group  
18 Chestnut Street  
Worcester, MA 01608  
Expert witness

15. Kenneth M. Kamler, M.D.  
410 Lakeville Road, Suite 100  
New Hyde Park, NY 11042  
Fact & expert witness

4. **Trial Exhibits**

**For Plaintiff:**

|    |   |  |
|----|---|--|
| 1  | Complaint and Civil Cover Sheet   |  |
| 2  | Answer  |  |
| 3  | Miscellaneous internal emails produced by Defendant with Rule 26 Disclosure |  |
| 4  | Plaintiff's response to defendant's Interrogatories                         |  |
| 5  | Plaintiff's written response to defendant's Request for Production          |  |
| 6  | Defendant's response to plaintiff's Interrogatories                         |  |
| 7  | Defendant's written response to plaintiff's Request for Production          |  |
| 8  | Medical Records of Dr. Stellar  |  |
| 9  | Medical Records Dr. Helen Marks.  |  |
| 10 | Medical Records Dr. Kamler  |  |
| 11 | CV and Expert report Dr. Kamler   |  |
| 12 | Medical records Dr. Simpson   |  |



|    | Description  | Objections        |
|----|--|-------------------|
| 13 | CV and Expert Report Dr. Montero   |                   |
| 14 | Medical records from Mercy Hospital - to be produced                         | Not produced      |
| 15 | X-rays of hand – 3/02/07   | Not identified    |
| 16 | Expert report and CV from Dr. Groves   |                   |
| 17 | Amended report and CV from Dr. Groves  |                   |
| 18 | Dr. Cohen production   |                   |
| 19 | Life Expectancy Analysis for Dr. Cohen, 21 <sup>st</sup> Century             | Hearsay Relevance |
| 20 | Life Expectancy Analysis for Dr. Cohen, EMSI                                 | Hearsay Relevance |
| 21 | Newspaper Article re Finnish Strike  | Hearsay Relevance |
| 22 | Provident Claim File   |                   |
| 23 | Copy of Provident archived emails  |                   |
| 24 | Copy of Provident computer screens associated with Cohen Policy and/or Claim |                   |
| 25 | Copy of Provident Claim file associated with Unum Policy                     |                   |
| 26 | Copies of archived emails associated with UNUM Policy or Claim file          |                   |
| 27 | Copies of Computer Screens associated with UNUM Policy or Claim File         |                   |

|    | Description   | Objection |
|----|---|-----------|
| 28 | Application for Policy                                |           |
| 29 | Disability claims Process Document                    |           |
| 30 | Disability Claims Manual Between 4/1/2003 – 4/10/2010 |           |
| 31 | The Benefit Claims Manual as of 4/1/2003              |           |
| 32 | Accident Report                                       | Hearsay   |
|    |   |           |

**For Defendant**

**Objections**

|   | Description  | Objection |
|---|--|-----------|
| 1 | Policy Number Policy No. 36-337-6072590                  |           |
| 2 | March 6, 2003 letter from Dr. Cohen                      |           |
| 3 | March 10, 2003 letter from Provident Life to Dr. Cohen   |           |
| 4 | August 5, 2003 letter from Provident Life to Dr. Cohen   |           |
| 5 | August 5, 2003 letter from Provident Life to Dr. Simpson |           |
| 6 | August 11, 2003 letter from Dr. Cohen                    |           |
| 7 | Medical records of Dr. Simpson                           |           |

|    | Description   | Conclusion  |
|----|---|---|
| 8  | August 19 2003 letter Provident Life to Dr. Cohen         |   |
| 9  | August 18, 2003 note of telephone conversation            |   |
| 10 | August 14, 2003 Clinical Consultant note                  |   |
| 11 | Field service referral form                               |   |
| 12 | Medical records of Charles Mitgang, M.D.                  |   |
| 13 | Medical records of Kenneth Kammler, M.D.                  |   |
| 14 | Medical records of David Weinstock, M.D.                  |   |
| 15 | Action plan records                                       |   |
| 16 | Undated letter from Dr. Cohen advising of notice of claim |   |
| 17 | Initial Claimants Statement                               | We believe this is telephone interview notes and are hearsay. |
| 18 | Attending Physicians Statement of Dr. Simpson             |   |
| 19 | Job Description Form                                      |   |
| 20 | Customer Care Field Service Report, September 24, 2003    | Hearsay   |
| 21 | October 1, 2003 telephone note                            | Hearsay   |

| Exhibit 101 |   |         |
|-------------|---|---------|
| 22          | Vocational Rehabilitation Consultant log report, October 15, 2003 |         |
| 23          | Business records of Dr. Cohen:                                    |         |
| 24          | Telephone call memo, October 21, 2003                             | Hearsay |
| 25          | October 29, 2003 correspondence to Dr. Cohen:                     |         |
| 26          | November 1, 2003 voicemail notation                               | Hearsay |
| 27          | November 13, 2003 telephone memo                                  | Hearsay |
| 28          | November 13, 2003 telephone memo                                  | Hearsay |
| 29          | November 18, 2003 correspondence to Dr. Cohen.                    |         |
| 30          | November 20, 2003 telephone memo                                  | Hearsay |
| 31          | November 25, 2003 fax from Dr. Cohen to Provident Life            |         |
| 32          | November 24, 2003 letter Dr. Cohen to Provident Life              |         |
| 33          | Claimant Statement, November 24, 2003                             |         |
| 34          | Attending Physician Statement, November 24, 2003                  |         |
| 35          | December 11, 2003 note of telephone conversation                  | Hearsay |
| 36          | December 12, 2003 note of telephone conversation                  | Hearsay |

|    |  |  |
|----|--|--|
| 37 | December 17, 2003 letter to Dr. Cohen                              |  |
| 38 | Claimant Statement, December 22, 2003                              |  |
| 39 | Claimant Statement, December 22, 2003                              |  |
| 40 | Vocational Rehabilitation Consultant Log Report, December 19, 2003 |  |
| 41 | Attending Physician Statement, February 23, 2004                   |  |
| 42 | Claimant Statement, December 12, 2004                              |  |
| 43 | Claimant Statement, March 22, 2004                                 |  |
| 44 | Attending Physician Statement, March 29, 2004                      |  |
| 45 | Claimant Supplemental Statement, April 22, 2004                    |  |
| 46 | Attending Physician Statement, April 23, 2004                      |  |
| 47 | File review response by Joel Sacks, M.D.                           |  |
| 48 | Clinical Review Request, July 29, 2004                             |  |
| 49 | Dr. Malek Report Dated August 24, 2004                             |  |
| 50 | Attending Physician Statement (Guardian), August 19, 2004          |  |


| Exh. | Description   | Objection |
|------|---|-----------|
| 51   | Claimant Statement, February 10, 2005                           |           |
| 52   | Attending Physician Statement, October 10, 2005                 |           |
| 53   | Attending Physician Statement, May 23, 2005                     |           |
| 54   | Claimant Statement May 23, 2005                                 |           |
| 55   | Claimant Statement February 10, 2005                            |           |
| 56   | September 8, 2003 Field Report                                  | Hearsay   |
| 57   | Claimant Statement July 27, 2005                                |           |
| 58   | August 17, 2005 Field Report                                    | Hearsay   |
| 59   | February 21, 2006<br>Correspondence Provident Life to Dr. Cohen |           |
| 60   | Financial Services Referral, October 28, 2005                   |           |
| 61   | Benefits Center field memo, November 2, 2005                    | Hearsay   |
| 62   | Management Referral, November 25, 2005                          |           |
| 63   | Telephone Memo, December 7, 2006                                | Hearsay   |
| 64   | March 31, 2005 Correspondence to Dr. Cohen                      |           |
| 65   | March 30, 2006 Correspondence to Dr. Cohen                      |           |

|    |  |  |
|----|--|--|
| 66 | Extended Duration Unit Triage Form Dated April 25, 2006              |  |
| 67 | Claimant Statement, May 15, 2006                                     |  |
| 68 | Attending Physician Statement, May 15, 2006                          |  |
| 69 | June 28, 2006 Correspondence from Provident Life to Dr Cohen         |  |
| 70 | Management Referral July 2006  |  |
| 71 | Management Referral July 13, 2006                                    |  |
| 72 | November 20, 2006 Management Referral                                |  |
| 73 | Extended Duration Unit Triage Form, December 13, 2006                |  |
| 74 | December 13, 2006 Correspondence to Dr. Cohen                        |  |
| 75 | March 5, 2009 Correspondence to Dr. Cohen                            |  |
| 76 | April 1, 2009 Correspondence Cheryl Lipsius, Esq. to Provident Life  |  |
| 77 | April 23, 2009 Correspondence Provident Life to Cheryl Lipsius, Esq. |  |
| 78 | 1999 Federal tax return of Dr. Cohen                                 |  |
| 79 | 2000 Federal tax return of Dr. Cohen                                 |  |
| 80 | 2001 Federal tax return of Dr. Cohen                                 |  |

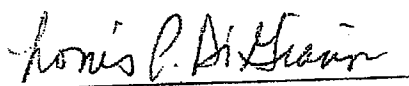
|    |   |  |
|----|---|--|
| 81 | 2002 Federal tax return of Dr. Cohen                    |  |
| 82 | Claim file maintained Provident Life                    | All Benefits Center phone memo and field reports are hearsay. Management Referral PLC-0002-IDI-000309-hearsay. |
| 83 | Dr. Cohen's responses to interrogatories                |  |
| 84 | Complaint filed by Dr. Cohen                            |  |
| 85 | Dr. Groves report                                       |  |
| 86 | Dr. Groves CV   |  |
| 87 | X-rays of hand – 3/02/07<br><br>(From Plaintiff's list) |  |

Dated: New York, New York  
March 30, 2011

SCHINDEL, FARMAN, LIPSIUS  
GARDNER & RABINOVICH LLP  
Attorneys for Plaintiff

  
Ira S. Lipsius, Esq.  
14 Penn Plaza, Suite 500  
New York, NY 10122

McELROY, DEUTSCH, MULVANEY  
& CARPENTER, LLP  
Attorneys for Defendant

  
Louis P. DiGiaimo, Esq.  
1300 Mount Kembel Ave. P.O. Box 2075  
Morristown, NJ 07962

**SO ORDERED:**

\_\_\_\_\_  
U.S.D.J.

**DATED:** \_\_\_\_\_